

Senate Study Bill 1088 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/BANKING DIVISION
BILL)

A BILL FOR

1 An Act relating to matters under the purview of the division of
2 banking of the department of commerce.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 524.211, subsection 3, Code 2011, is
2 amended to read as follows:

3 3. The superintendent, general counsel, examiners, and
4 other employees of the banking division, who have credit
5 relations with a person or entity licensed or registered
6 pursuant to chapter 535B, 535D, or 536C, are prohibited from
7 participating in decisions, oversight, and official review
8 of matters concerning the regulation of the licensee or
9 registrant.

10 Sec. 2. Section 524.212, subsection 2, Code 2011, is amended
11 to read as follows:

12 2. The superintendent may receive documents, materials,
13 or other information, including otherwise confidential and
14 privileged documents, materials, or other information, from
15 other local, state, federal, and international regulatory
16 agencies, the conference of state bank supervisors and its
17 affiliates or subsidiaries, the American association of
18 mortgage regulators and its affiliates or subsidiaries, and
19 the national association of consumer credit administrators
20 and its affiliates or subsidiaries, and shall maintain as
21 confidential and privileged any such document, material, or
22 other information received with notice or the understanding
23 that it is confidential or privileged under the laws of the
24 jurisdiction that is the source of the document, material, or
25 other information. With respect to documents, materials, or
26 other information that is shared or stored electronically,
27 the superintendent is authorized to take any necessary steps
28 to ensure the division's information technology systems
29 comply with the information technology security requirements
30 established by any of the regulatory agencies or associations
31 of state regulatory agencies described in this section.

32 Sec. 3. Section 524.904, subsection 5, Code 2011, is amended
33 to read as follows:

34 5. a. A state bank may grant loans and extensions of credit
35 to a corporate group in an amount not to exceed twenty-five

1 percent of the state bank's aggregate capital if all loans and
2 extensions of credit to any one borrower within a corporate
3 group conform to subsection 2 or 3, and the financial strength,
4 assets, guarantee, or endorsement of any one corporate group
5 member is not relied upon as a basis for loans and extensions
6 of credit to any other corporate group member. A state bank
7 may grant loans and extensions of credit to a corporate group
8 in an amount not to exceed thirty-five percent of aggregate
9 capital if all loans and extensions of credit to any one
10 borrower within a corporate group conform to subsection 2,
11 3, or 4, and the financial strength, assets, guarantee, or
12 endorsement of any one corporate group member is not relied
13 upon as a basis for loans and extensions of credit to any other
14 corporate group member. ~~A corporate group includes a person
15 and all corporations in which the person owns or controls fifty
16 percent or more of the shares entitled to vote. While not to
17 be construed as an endorsement of the quality of any loan or
18 extension of credit, the superintendent may authorize a state
19 bank to grant loans and extensions of credit to a corporate
20 group in an amount not to exceed fifty percent of aggregate
21 capital if all loans and extensions of credit to any one
22 borrower within a corporate group conform to subsection 2 or 3,
23 and the financial strength, assets, guarantee, or endorsement
24 of any one corporate group member is not relied upon as a basis
25 for loans and extensions of credit to any other corporate group
26 member.~~

27 b. For the purposes of this subsection, a corporate group
28 includes the following:

29 (1) The interests of a group of more than one borrower,
30 or any combination of the members of the group, are so
31 interrelated that they should be considered a unit for the
32 purpose of applying the lending limit limitations of this
33 section.

34 (2) One or more persons owns or controls fifty percent or
35 more of the voting securities or membership interests of the

1 borrowing entity or a member of the group.

2 (3) One or more persons controls, in any manner, the
3 election of a majority of the directors, managers, trustees,
4 or other persons exercising similar functions of the borrowing
5 entity or a member of the group.

6 (4) One or more persons has the power to vote fifty percent
7 or more of any class of voting securities or membership
8 interests of the borrowing entity or a member of the group.

9 c. To demonstrate compliance with this subsection, a
10 bank shall maintain in its files, at a minimum, all of the
11 following:

12 (1) Documentation demonstrating the current ownership of
13 the borrowing entity.

14 (2) Documentation identifying the persons who have voting
15 rights in the borrowing entity.

16 (3) Documentation identifying the board of directors and
17 senior management of the borrowing entity.

18 (4) The bank's assessment of the borrowing entity's means
19 of servicing the loan or extension of credit, including
20 specific reasons in support of that assessment. The assessment
21 shall include an analysis of the borrowing entity's financial
22 history, its present and projected economic and financial
23 performance, and the significance of any financial support
24 provided to the borrowing entity by members of the corporate
25 group and third parties.

26 Sec. 4. Section 524.904, subsection 7, Code 2011, is amended
27 by adding the following new paragraph:

28 NEW PARAGRAPH. m. A renewal or restructuring of a loan as
29 a new loan or extension of credit following the exercise by
30 a state bank of reasonable efforts, consistent with safe and
31 sound banking practices, to bring the loan into conformance
32 with the lending limit, unless new funds are advanced by the
33 bank to the borrower or unless a new borrower replaces the
34 original borrower or unless the superintendent determines that
35 the renewal or restructuring was undertaken as a means to evade

1 the bank's lending limit.

2 Sec. 5. Section 524.1201, subsection 4, Code 2011, is
3 amended by striking the subsection.

4 Sec. 6. Section 535B.4, Code 2011, is amended by adding the
5 following new subsection:

6 NEW SUBSECTION. 8A. A licensee may not establish branch
7 locations outside of the United States.

8 Sec. 7. Section 535B.6, Code 2011, is amended to read as
9 follows:

10 **535B.6 Licensing of ~~foreign corporation~~ certain corporations.**

11 1. An applicant that is a ~~foreign corporation~~ incorporated
12 under the laws of another state in the United States must be
13 authorized to do business in this state. ~~A foreign corporation~~
14 Such a corporation shall file with the license application both
15 of the following:

16 ~~1- a.~~ a. An irrevocable consent, duly acknowledged, that
17 suits and actions may be commenced against that licensee in the
18 courts of this state by service of process in the usual manner
19 provided for by the statutes and court rules of this state.

20 ~~2- b.~~ b. Proof of authorization to do business in this state.

21 2. Businesses that are incorporated outside of the United
22 States are not eligible for a license.

23 Sec. 8. Section 535D.4, subsection 1, Code 2011, is amended
24 to read as follows:

25 1. On or after January 1, 2010, an individual shall not
26 engage in the business of a mortgage loan originator with
27 respect to any dwelling or residential real estate located in
28 this state without first obtaining and maintaining annually
29 a license under this chapter. Each licensed mortgage loan
30 originator must register with and maintain a valid unique
31 identifier issued by the nationwide mortgage licensing system
32 and registry.

33 Sec. 9. NEW SECTION. **535D.23 Reports of condition required**
34 **— exceptions.**

35 Each mortgage loan originator licensee shall submit

1 reports of condition to the nationwide mortgage licensing
2 system and registry unless the mortgage loan originator's
3 activity is included in a report submitted by the mortgage
4 loan originator's employer in accordance with section 535B.11,
5 subsection 3, section 535B.18, or section 536A.14, subsection
6 2. The reports shall be in such form and shall contain such
7 information as the nationwide mortgage licensing system and
8 registry may require.

9

EXPLANATION

10 This bill makes several changes in connection with banking
11 and mortgage regulation by the division of banking of the
12 department of commerce.

13 The bill provides that the superintendent of banking
14 is authorized to ensure that the division's information
15 technology systems comply with information technology
16 security requirements established by any regulatory agency or
17 association of regulatory agencies specified in Code section
18 524.212.

19 The bill makes changes regarding provisions relating to
20 a state bank granting loans and extensions of credit to a
21 corporate group. The bill provides that, while not to be
22 construed as an endorsement of the quality of any loan or
23 extension of credit, the superintendent may authorize a state
24 bank to grant loans and extensions of credit to a corporate
25 group in an amount not to exceed 50 percent of aggregate
26 capital if all loans and extensions of credit to any one
27 borrower within a corporate group conform to an applicable
28 percentage of capital limitations and the financial strength,
29 assets, guarantee, or endorsement of any one corporate group
30 member is not relied upon as a basis for loans and extensions
31 of credit to any other corporate group member.

32 The bill modifies the definition of a corporate group for
33 purposes of applying corporate group bank lending limits. A
34 corporate group shall include the interests of a group of
35 more than one borrower, or any combination of the members

1 of the group, which are so interrelated that they should be
2 considered a unit for the purpose of applying the lending
3 limits; one or more persons owning or controlling 50 percent
4 or more of the voting securities or membership interests
5 of the borrowing entity or a member of the group; one or
6 more persons controlling, in any manner, the election of a
7 majority of the directors, managers, trustees, or other persons
8 exercising similar functions of the borrowing entity or a
9 member of the group; or one or more persons having the power
10 to vote 50 percent or more of any class of voting securities
11 or membership interests of the borrowing entity or a member
12 of the group. The bill states that required documentation to
13 demonstrate compliance with corporate group bank lending limits
14 includes, at a minimum, demonstrating the current ownership
15 of the borrowing entity, identifying the persons who have
16 voting rights in the borrowing entity, identifying the board
17 of directors and senior management of the borrowing entity,
18 and the bank's assessment of the borrowing entity's means of
19 servicing the loan or extension of credit including specific
20 reasons in support of that assessment.

21 The bill deletes a provision which states that a bank shall
22 not operate a loan production office or deposit production
23 office in Iowa unless either the bank has received approval
24 from the superintendent or the bank operated the loan
25 production office or deposit production office prior to July
26 1, 2006.

27 The bill includes in the list of exemptions from a bank's
28 lending limit a renewal or restructuring of a loan as a new
29 loan or extension of credit if efforts had been made to bring
30 the loan into conformance with the lending limit, unless as
31 part of the renewal or restructuring new funds are advanced
32 by the bank to the borrower or a new borrower replaces the
33 original borrower or the superintendent determines that a
34 renewal or restructuring was undertaken as a means to evade the
35 bank's lending limit.

1 The bill provides that a mortgage banker or mortgage broker
2 licensed under Code chapter 535B may not establish branch
3 locations outside of the United States, specifies that an
4 applicant incorporated under the laws of another state in the
5 United States must be authorized to do business in Iowa, and
6 specifies that businesses that are incorporated outside of the
7 United States are not eligible for licensure.

8 The bill adds persons or entities licensed under Code
9 chapter 535D, the mortgage licensing act, to provisions
10 prohibiting the superintendent, general counsel, examiners,
11 and other employees of the banking division, if engaged in
12 credit relations with the person or entity, from participating
13 in specified regulatory actions over the person or entity.
14 The bill provides that an individual shall not engage in
15 the business of a mortgage loan originator with respect
16 to any dwelling or residential real estate located in this
17 state without obtaining and maintaining a license under Code
18 chapter 535D. This provision had previously been restricted
19 to "residential real estate". The bill establishes a new
20 requirement that each mortgage loan originator licensee under
21 the Code chapter shall submit to the nationwide mortgage
22 licensing system and registry reports of condition required by
23 the system and registry, unless the mortgage loan originator's
24 activity is included in a mortgage call report submitted by
25 the originator's employer in accordance with specified Code
26 sections.